IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JUN 7 - 1983
Judge George N. Leighton
U. S. District Court

DOCKETED
JUN 9 1983

ATARI, INC.
a Delaware corporation,

and

MIDWAY MFG. CO.,
an Illinois corporation,

Plaintiffs,

vs.

NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,
a Tennessee corporation,

PARK TELEVISION d/b/a
PARK MAGNAVOX HOME
ENTERTAINMENT CENTER,
an Illinois partnership,

and

ED AVERETT,
an individual,

Defendants.

Civil Action No. 81 C 6434

Hon. George N. Leighton

NOTICE OF FILING

To: See attached service list

PLEASE TAKE NOTICE, that we have this date filed Defendant's Response to Motion To Disqualify Reuben & Proctor, a copy of which is attached and served upon you.

DATED: June 7, 1983

One of the attorneys for
Defendants.

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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ATARI, INC., A Delaware corporation, and MIDWAY MFG. CO., an Illinois corporation, Plaintiffs, vs. NORTH AMERICAN PHILIPS CONSUMER ELECTRONICS CORP., a Tennessee corporation, PARK TELEVISION, d/b/a PARK MAGNAVOX ENTERTAINMENT CENTER, an Illinois partnership, and ED AVERETT, an individual, Defendants.	Civil Action No. 81 C 6434 The Honorable George N. Leighton

RESPONSE TO MOTION TO
DISQUALIFY REUBEN & PROCTOR

> Well before appointment to the bench this Court had occasion to note the use of the meritless disqualification motion as a litigation tactic. That trend has not abated, and in this case it has the usual effect of diverting the litigation from attention to the merits. Bobbitt v. Victorian House, Inc., 545 F. Supp. 1124, 1128 (N.D. Ill. 1982) (Shadur, J.).

Judge Shadur's comment is dramatically illustrated by Plaintiff Midway Mfg. Co.'s Motion for Disqualification of Reuben & Proctor as Counsel for Defendants and supporting memorandum. In these papers, Plaintiff Midway claims, without pleading any basis in fact, that counsel for Defendants North American Philips Consumer Electronics Corp. ("North American") and Park Television ("Park") should be disqualified because the firm had previously acted as general counsel on behalf of the Amusement

Game Manufacturers Association ("Association"), and, consequently, that Reuben & Proctor's appearance in this matter violates Canons 4 and 9 of the American Bar Association's Code of Professional Responsibility ("Code")

The context in which this motion was filed makes it obvious that this motion is a baseless litigation tactic. There are two plaintiffs in this copyright case, both members of the Association and, arguably, both in a position to object to Reuben & Proctor's involvement in this case on the basis of prior representation of the Association. Yet, Atari, Inc. ("Atari") did not move for disqualification of Reuben & Proctor. Only Midway filed a disqualification motion and, simultaneously, in a patent suit pending in this court, The Magnavox Company v. Bally Midway Mfg. Co., No. 83 C 2351, threatened Reuben & Proctor with a motion for disqualification. (A copy of the letter to Reuben & Proctor from A. Sidney Katz, Esq. is attached hereto as Defendants' Exhibit A.) As Mr. Maher's affidavit shows Mr. Katz did not raise the disqualification issue for more than one month after he became aware of Reuben & Proctor's appearance in this suit. (A copy of Mr. Maher's affidavit is attached hereto as Defendants' Exhibit B.) Without doubt both actions were intended to harass and to intimidate Defendants North American, its subsidiary, Magnavox, and its distributor, Park, into abandoning its chosen counsel and thereby unnecessarily delaying the proceedings in both cases.

Midway's motion and memorandum are purposely based on

selectively misread passages from the minutes of the Association and misrepresented facts. Such conduct on the part of Midway's counsel truly bespeaks something other than concern about professional ethics. None of Midway's allegations have any merit and Defendants briefly state the facts and the applicable law and reply to the points raised.

Relevant Facts

This action was originally filed by Atari and Midway against North American, Park d/b/a Park Magnavox Entertainment Center and Ed Averett on November 11, 1981. The case concerns allegations of copyright infringement, unfair competition and deceptive trade practices involving Pac-Man, a video game sold by Atari for home use and K.C. Munchkin, a video game produced by North American. The case has been tried and appealed on the issue of a preliminary injunction. Reuben & Proctor was engaged by Defendants to assist in the trial on the merits and filed an appearance on May 5, 1983. On May 25, 1983, Plaintiffs filed this motion to disqualify.

Reuben & Proctor never directly represented Bally or Midway. From April 20, 1981 until December 31, 1982, the firm of Reuben & Proctor was general counsel to the Association. David W. Maher, a member of the firm, was in charge of the firm's representation of the Association. On May 20, 1982, Bally Manufacturing Co., Midway's parent company, joined the Association. As is more specifically set forth in the

Affidavit of David W. Maher, as Defendants' Exhibit B, and in this brief, there were no communications of confidential or privileged information between members of the Association and the firm of Reuben & Proctor regarding protection against copyright of video games generally or Pac-Man in particular. In fact, the communications referred to in the exhibits attached to Midway's memorandum and in the Katz letter (Defendants' Exhibit A) consist of nothing more than exchanges of court documents, briefs (P. Exhibit D), drafts of legislation (P. Exhibit H), press releases (P. Exhibit C) and agency orders (P. Exhibit G), which Bally sent to Mr. Maher for distribution to all other Association members, or which Mr. Maher sent to Bally as part of such distributions to all members, and which on their face do not involve the exchange of sensitive or confidential information.[1/] The discussions between attorneys for Association members covered topics of general legal interest to the Association members, analogous to a continuing legal education seminar, and also involved no exchange of confidential information. (P. Exhibits A,B,C,E,F,I,J, and K.)

1/ Defendants plan to move to hold plaintiff in contempt for including, as part of the material covered by a protective order, a press release and a brief filed in the United States Supreme Court.

ARGUMENT

I. Reuben & Proctor Previously Represented Only The Association, Not Midway, And Did Not Share Any Confidences Of Midway Relevant To The Present Case.

An individual moving for disqualification of an attorney and his law firm on basis of conflict of interest must show that he believed, and there was a reasonable basis on which to believe, that the attorney-client relationship existed between the movant and the attorney. LaSalle National Bank v. Pioneer National Title Insurance Company, No. 79 C 2837 (N.D. Ill.); Hydril Company v. Multiflex, 553 F. Supp. 552 (1982). The attorney-client relationship is consensual and arises only when both the attorney and client have consented to its formation. The client must manifest its authorization that the attorney act on his behalf and the attorney must indicate his acceptance of the power to act on the client's account. York v. Stiefel, __ Ill. App. 3d ____, 440 N.E. 2d 440, 445 (3d Dist. 1982).

The attorney-client relationship can arise either by explicit or implicit agreement or when a layman submits confidential information to an attorney with a reasonable belief that the attorney was acting on the layman's behalf. Westinghouse Electric Corporation v. Kerr-McGee Corporation, 580 F. 2d. 1311 (1978).[2/]

2/ In Westinghouse, the trade association in retaining Kirkland and Ellis specifically instructed the firm as follows:

(FOOTNOTE CONTINUED ON NEXT PAGE)

Only where an attorney-client relationship exists, may the client prevent disclosure of communications between the parties. This privilege is designed to encourage full and frank communication between attorneys and their clients, recognizing that sound legal advice depends on the client's ability to engage in open discussions with the attorney, Upjohn Co. v. United States, 449 U.S. 383 (1981). The privilege represents a public policy determination that the confidentiality of such communications is in the interest of ensuring the administration of justice, Id., citing Hunt v. Blackburn, 128 U.S. 464, 470, 9 S.Ct. 125, 127, 32 L.Ed. 488 (1888), and is reflected in Canons 4, 5 and 9 ABA's Code of Professional Responsibility.

The strict standards of the Code are not automatically invoked whenever a law firm brings suit against a member of a trade association that the firm represents. If they were, many lawyers would be needlessly disqualified because the

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

> Your firm will , of course, act as an independent expert counsel and hold any company information learned through these interviews in strict confidence, not to be disclosed to any other company, or even to API [the trade association], except in aggregated or such other form as will preclude identifying the source company with its data.

In the present case, no such instructions were given to Reuben & Proctor by the Association, nor was there any reasonable expectation that the firm would treat data submitted by any member in confidence from other members.

Code's standards impose upon counsel who seeks to avoid disqualification a burden so heavy that it will rarely be met. That burden is properly imposed when a lawyer undertakes to represent two adverse parties both of which are his clients in the traditional sense. But when an adverse party has only a vicarious relationship by virtue of membership in an association, the risks against which the Code guards will not inevitably arise. "A law firm that represents the American Bar Association need not decline to represent a client injured by an automobile driven by a member of the ABA." Glueck v. Jonathan Logan, Inc., 654 F. 2d 746 (2d Cir. 1981); Board of Education v. Nyquist, 590 F.2d 1241 (2d Cir. 1979).

Reuben & Proctor and Mr. Maher never represented Midway individually in any transaction, but only represented the Association. Midway's memorandum presents no evidence showing the existence of an attorney-client relationship on any basis. Midway's memorandum does not identify any confidential information that was submitted by Midway to Reuben & Proctor or Mr. Maher during the course of their representation of the Association upon the reasonable belief that Reuben and Proctor was acting as Midway's attorney, because, in fact, no such information was ever submitted. In marked contrast Mr. Maher's affidavit shows he never received any confidential information.

Furthermore, there can be no inference or presumption that confidential information was given since such presumption is based on a formal attorney-client relationship and does not exist where the only relation is an implied one. This prin-

ciple is implicit in Westinghouse Electric Corporation v. Gulf Oil Corporation, 588 F. 2d 221 (7th Cir. 1978), and was explicitly recognized in Fred Weber, Inc., v. Shell Oil Co., 566 F. 2d 602 (8th Cir. 1971):

> Absent an attorney-client relationship no court has applied the presumption inherent in Canon 4. 566 F. 2d at 608.

Moreover, any documents submitted by Midway to Reuben & Proctor were not submitted by a layman but by Midway's individual counsel. Midway's claim that it reasonably believed Reuben & Proctor was acting as its individual attorney when it represented the Association is further discredited by the fact that other Association members were Midway's major competitors and by the fact that Midway's individual counsel participated in virtually all Association activities. The absurdity of Midway's position is further illustrated by the fact that from time to time members of the Association, including Midway, were suing each other [3/] and Mr. Katz now claims that he disclosed confidences about both the patent and copyright suits to the adversaries. As counsel to the Association, Reuben & Proctor represented the interests of the industry generally and was never involved in representing or advancing the cause of any single member to the detriment of other members. Reuben &

3/ Williams Electronics, Inc. v. Bally Mfg. Corp., No. 82 C 2167 (N.D. Ill. 1982); Publications International Ltd. v. Bally Mfg. Corp., No. 82 C 2183 (N.D. Ill. 1982) (Bally Midway Mfg. Co.'s counterclaim against Gulf & Western Corp, the parent of Gremlin/Sega.)

Proctor was never given by Midway or any other member information in confidence as Kirkland and Ellis was in Westinghouse, Footnote 2, supra. Plaintiff does not claim otherwise. All the information Reuben & Proctor ever received was information of a public nature known to the members and the industry generally. Under these circumstances, for Midway's counsel to share privileged or confidential information with counsel for the Association and with counsel for Midway's competitors at Association functions would have been inconceivable for he would then be discussing such information with competitors and adversaries and under the theory of Midway's disqualification motion everyone at that meeting would be "conflicted" out.

II. Reuben & Proctor's Prior Representation Of The Association Is Not "Substantially Related" To This Litigation.

Assuming arguendo that there was an attorney-client relationship, an attorney's role as general counsel for a trade association does not ipso facto prevent the attorney from subsequently representing an association member absent a showing that confidential information was actually communicated and there was a substantial relationship between what was discussed and the present case. Glueck v. Jonathan Logan, Inc., 653 F. 2d 746 (2d Cir. 1981); Matter of Allied Artists Pictures Corp., 5 Bankr. Ct. Dec. 636 (S.D.N.Y. 1979). As we have shown above, there was no confidential information exchanged. As we discuss below, there is no substantial relationship between Reuben & Proctor's representation of the Association and the present case.

The standard used in federal courts to determine whether an attorney should be disqualified on the ground of an allegedly conflicting prior relationship is the "substantial relationship" test based on Canons 4 and 9 of the Code of Professional Responsibility. The leading decision in the Seventh Circuit applying the "substantial relationship" test is Cannon v. U.S. Acoustics Corp., 398 F. Supp. 209 (N.D.Ill. 1975), aff'd on opinion below, 532 F. 2d 1118 (7th Cir. 1976). In explaining the test, the Cannon court held that "[o]bviously the prohibitions of Canon 4 and 9 do not apply in every instance in which a lawyer undertakes a case adverse to the interests of a former client" -- i.e., there is no per se rule against suing a former client. The critical issue is the relationship of the two representations and the possibility that secrets and confidences reposed by the former client may be used against his interests. Id. at 223. The court --

> [w]ould order disqualification if the matters in the two engagements were substantially related. This is determined by asking whether it could reasonably be said that during the former representation the attorney might have acquired information related to the subject matter of the subsequent representation. (398 F. Supp. at 223.)

Accord, LaSalle National Bank v. County of Lake, 703 F.2d 252, 255 (7th Cir. 1983); Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 646 F. 2d 1020, 1027-32 (5th Cir. 1981).

In determining whether a "substantial relationship" exists, the Courts must carefully analyze the factual and legal issues involved in the allegedly conflicting representations.

Duncan, supra. The existence of the relationship during which confidential information might have been given to the attorney must be "patently clear." Government of India v. Cook Industries, Inc., 569 F. 2d 737, 739-40 (2d Cir. 1978); Williamsburg Wax Museum, Inc. v. Historic Figures, Inc., 501 F. Supp. 326, 329 (D.D.C. 1980); Moyroud v. Itek Corp., 528 F. Supp. 707, 708-09 (S.D. Fla. 1981); Waterbury Garment Corp. v. Strata Productions, Inc., 554 F. Supp. 63, 67 (S.D.N.Y. 1982). Another important consideration in determining whether confidences relevant to the present case were provided is "the limited scope of the [prior] representation." Simmons, Inc. v. Pinkerton's Inc., 555 F. Supp. 300, 304 (N.D. Ill. 1983); accord, Spragins v. Huber Farm Service, Inc., 542 F. Supp. 166, 172 (N.D. Miss. 1982).

Under Cannon, Midway has the burden of establishing that during Reuben & Proctor's prior representation of the Association, Mr. Maher rendered professional services on matters that are substantially related to the matters embraced in the pending lawsuit. This Midway has not done. There is no "substantial relationship" between Reuben & Proctor's prior representation of the Association, on the one hand, and the subject matter of this lawsuit, on the other. The Foxboro Company v. Spectrum Associates, Inc., 213 U.S.P.Q. 439 (D.Ct.Mass 1981); Moyroud v. Itek Corp., 528 F. Supp. 707 (1981); Schloetter v. Railoc of Indiana, Inc.; 546 F. 2d 706 (1976).

In light of the limited scope of the prior repre-

sentation, even a casual scrutiny of the documents attached to Midway's memorandum and Mr. Maher's affidavit clearly shows that, despite Midway's allegations, no confidential information about Midway was made available to Reuben & Proctor through its representation of the Association. The entire discussions and communications between Reuben & Proctor and legal and lay representatives of the Association's members consisted of exchanges of publicly available materials of general interest to the Association's membership. The periodic meetings of attorneys for the Association's members were nothing more than seminars on legal topics of common interest. There was no exchange of sensitive and confidential information pertaining to the Pac-Man audiovisual work and there is no "substantial relationship" between Reuben & Proctor representation of the Association and the present suit.

III. Midway's "Appearance Of Impropriety" Argument Is Frivolous.

Midway cannot overcome the lack of substantial relationship between the present and former representations with a conclusory assertion that disqualification is nevertheless necessary "to avoid the appearance of impropriety." (Mem., p. 2) Recent authorities make it clear that the "appearance of impropriety" language in Canon 9 was not intended to override the "delicate balance" created by Canons 4 and 5. Unified Sewerage Agency v. Jelco Inc., supra, 646 F.2d at 1352; accord, Industrial Parts Distributors v. Fram Corp., supra, 504 F. Supp. at 1198-99; United States Industries, Inc.

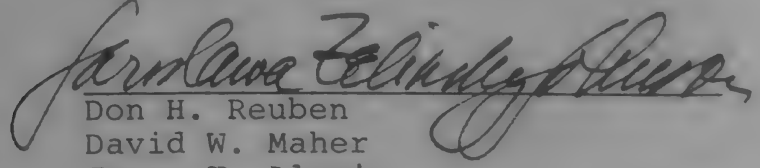
v. Goldman, 421 F. Supp. 7 (S.D.N.Y. 1976).

Moreover, Midway's Canon 9 claim amounts to an assertion that "if any arguable question can be raised regarding the propriety of a lawyer continuing to appear in a case an order can be obtained disqualifying that lawyer." This is a "dangerous doctrine," and clearly not the law. Smith v. Arc-Mation, Inc., 402 Mich. 115, 261 N.W. 2d 913, 715-16 (1978). On the contrary, the danger that disqualification motions will be used to harass is such that "[t]he possible appearance of improperity is simply too weak and too slender a reed on which to rest a disqualification order . . . particularly where the mere appearance of impropriety is far from clear." International Paper Co. v. Lloyd Mfg., Co., 555 F. Supp. at 135.

CONCLUSION

For the reasons stated above, Midway's motion to disqualify Reuben & Proctor should be denied.

Respectfully Submitted,



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May 20, 1983

BY MESSENGER

David W. Maher, Esq.
Reuben & Proctor
19 South LaSalle Street
Chicago, Illinois 60603

Re: Atari, Inc. and Bally Midway Mfg. Co. v. North American Philips - Our File No. 40851
and The Magnavox Company v. Bally Midway Mfg. Co. - Our File No. 43080

Dear Dave:

As I mentioned to you by telephone last Wednesday afternoon, May 18, and as mentioned to Magistrate Lefkow at the status hearing on Thursday morning, May 19, we believe that you and the firm of Reuben & Proctor have a conflict of interest in respect to the above-referenced two lawsuits involving our client and should withdraw from both cases.

As I had discussed, you and your firm were counsel to the trade association, A.G.M.A., when our client was also a member. You and I have worked closely in connection with the protection against copying of video games generally, and PAC-MAN in particular, both under U.S. and foreign laws. This is the very subject matter at issue in the first case referenced above, and the nature, construction and expression of the PAC-MAN video game are clearly involved in both of the referenced cases. In view of the considerable amount of interaction that we have had with you relating to our legal positions and the types of documents and evidence which we use in our cases, we believe that it is inappropriate for your firm to maintain your representation against our client in these cases.

In our phone discussion last Wednesday, you indicated that you disagreed with my position. The two attorneys from your firm who attended the hearing also indicated disagreement and suggested to Magistrate Lefkow that our position was frivolous.

EXHIBIT
A

They handed-up some highlighted cases to the Magistrate without providing us with copies. Although she refused consideration of this matter, as well as their cases, we would appreciate being provided with copies or at least citations of the cases if you believe they support your position.

Until this question is resolved, we submit that your firm should not consider, review or discuss any of our client's documents which were produced in connection with either of these cases.

Very truly yours,

WELSH & KATZ

By
A. Sidney Katz

ASK:lam
cc: Irving S. Rappaport, Esq.
Theodore W. Anderson, Esq.

RI, INC., a Delaware
oration, and
AY MFG. CO., an
nois corporation,

Plaintiffs,

vs.

TH AMERICAN PHILIPS CONSUMER
CTRONICS CORP., a Tennessee
poration, PARK TELEVISION,
/a PARK MAGNAVOX
TERTAINMENT CENTER, an
linois partnership, and
AVERETT, an individual,

Defendants.

Civil Action No. 81 C 6434
The Honorable
George N. Leighton

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

AFFIDAVIT

DAVID W. MAHER, being duly sworn, deposes and says:

1. I am a founding partner of the law firm, Reuben and Proctor and have practiced with the firm since June 16, 1978.

2. Reuben and Proctor has been engaged by North American Philips Consumer Electronics Corp. to represent it in the lawsuit captioned above.

3. The Amusement Game Manufacturers Association, formerly known as The Amusement Device Manufacturers Association (the "Association"), was incorporated as an Illinois not-for-profit corporation in January, 1981. The Association is a trade

EXHIBIT
B

association composed of manufacturing companies that make coin-operated video games, pin ball machines, juke boxes and similar devices.

4. Reuben and Proctor acted as general counsel for the Association from April, 1981 until December 31, 1982.

5. On May 20, 1982, Bally Manufacturing Corporation became a member of the Association. I am informed and believe that Bally Mfg. Co. (formerly Midway Mfg. Co.) is a wholly-owned subsidiary of Bally Manufacturing Corporation.

6. During the period April, 1981 through December 31, 1982, I was the partner of Reuben & Proctor in charge of representation of the Association. I fulfilled all the usual functions of general counsel of a trade association, including corporate record keeping, drafting of leases and employment contracts, counselling regarding corporate and antitrust law obligations, and circulation of information about current legal developments of interest to the Association and its members.

7. In the course of my dealings with the Association and with representatives of the Bally Manufacturing Corporation and its counsel in particular, our entire discussions and communications regarding protection against copying of video games generally and PAC-MAN in particular, both under U. S. and foreign laws consisted of:

a. Exchanges of court documents, briefs, and agency orders. These were materials which were sent to me for distribution to all other Association members, or materials that

I sent out as part of such distributions to all members. None of this correspondence involved the exchange of sensitive or confidential information.

b. Meetings of attorneys for Association members, and communications in connection with such meetings. My recollection is clear and the minutes of the meetings confirm that there was never any communication to me of any sensitive or confidential information with respect to any individual member. All communications involved exchanges of information among competitors, and in some instances among members, including Bally, that were then engaged in litigation with other members. Because of this, the information exchanged was carefully structured so that it was not privileged, and it was understood by all parties that it would be exchanged without compromising the positions of any of the parties or their lawyers. The only communications that ever occurred between Bally representatives and me involved matters that Bally was willing to disclose to its competitors.

8. One of the series of meetings referred to in paragraph 7 above took place over two days, October 14 and 15, 1982.

a. On October 14, 1982, the participants included representatives of Sega Enterprises, Inc., Bally and Destron, Inc., all members of the Association. I am informed and believe that Bally was then or had recently been engaged in litigation with the parent corporation of Sega Enterprises, Inc., Gulf & Western Corp., on the issues of copyright and trademark infringement relating to PAC-MAN (Publications International, Ltd. v. Bally Mfg. Corp. No. 82 C 2183, N.D. Ill.)

b. On October 15, 1982, the participants included representatives of Taito America Corporation, Data Enterprises, Inc., Williams Electronics, Inc., Bally, Exidy Electronics, Inc., Destron, Inc. and Atari, Inc. I am informed and believe that Bally was then or had recently been engaged in litigation with Williams Electronics, Inc. on the issues of copyright infringement, violation of the Lanham Act, violation of the Illinois Uniform Deceptive Trade Practices Act and unfair competition relating to a new coin-operated game (Williams Electronics, Inc. v. Bally Mfg. Corp. 82 C 2167, N.D. Ill.)

9. The complaint in this action was served on Bally on April 12, 1983. Six days earlier, however, on April 6, 1983, the Wall Street Journal published an article (a copy of which is attached hereto as Attachment A) discussing the complaint, the subject matter of the lawsuit and the reaction of Bally's general counsel. On the same date, the Chicago Sun-Times published an article about the lawsuit (a copy of which is attached hereto as Attachment B) identifying David Maher as one of the attorneys for Magnavox Company. On April 25, 1983, I received a telephone call from Sidney Katz, representing Bally, who asked me to agree to a stipulated extension of the date for Bally to answer or otherwise plead. I called Mr. Katz on April 26, 1983 and agreed so to stipulate. In both conversations, Mr. Katz and I discussed, in a very friendly manner, our previous relationship in connection with the Association but Mr. Katz made no mention of any alleged

conflict of interests. On May 16, 1983, I had another conversation with Mr. Katz regarding a status call in this action; Mr. Katz made no mention of any alleged conflict of interests. On May 18, 1983, I received a telephone call from Mr. Katz in which, for the first time, he raised the issue of an alleged conflict of interests.

11. Further affiant saith not.

David W. Maher

SUBSCRIBED and SWORN to
before me this 1st day
of June, 1983.

Notary Public

...idto Involve ...Workers

...ct was signed March 27 ...ced March 31. The sources ...rs are focusing on activity in ...mon stock over that pe-

...other high-technology issues, ... has been a glamour stock. ...ays the price of a Paradyne ...e rose in April 1981, in the ...ocial Security award, to $48 ...7. The stock, which traded as ...a share last year, split 3-for-2 ...owever, it fell sharply in the ...SEC lawsuit, losing $7.375 a ...lay and leading the New York ...ge's most-active list. Paradyne ...lay on the Big Board compos- ...7.375 a share, down $1.

...nment investigators pursuing ...f collusion in the contract ...id to be focusing on the series ...hat led to Paradyne's winning ...act.

... to these accounts, investiga- ...pect collusion by the Social Se- ...ls who traveled to Paradyne's ... in December 1980 to examine ...ne 8400"—the microcomputer ... alleges was somebody else's ...th Paradyne labels attached— ...aradyne P-2811 encryption de- ...legedly empty box with blinking ...ources say a computer could be ... so that data fed into it would ...e encrypted.

... Scapegoats

... some investigators reportedly ... those officials who witnessed ...ration might be offered as ... should the Social Security Ad- ... continue to be embarrassed by ...ne affair.

...he individuals already contacted ...tors is Alfred Leung, a former ...ity official, who left that agency ...r 1980, and was hired by Para- ...nsultant soon after it won the

Philips's Magnavox Co. Sues Bally Subsidiary On Pac Man Royalties

By a Wall Street Journal Staff Reporter

NEW YORK—North American Philips Corp. said its Magnavox Co. subsidiary sued a Bally Manufacturing Co. unit in a dispute over a license for video-game technology.

The breach-of-contract lawsuit, filed in Chicago federal court, alleges failure by Bally Midway Manufacturing Co. to pay royalties on the Pac Man coin-operated arcade video game under a sublicense from Magnavox.

The dispute involved board circuitry used in a variety of video games, including the Pac Man game.

North American Philips said Magnavox holds the exclusive license for use of a video-game patent, and granted a sublicense under the patent to Bally Midway as part of a legal settlement in 1976. Magnavox had alleged a patent infringement by Bally Midway. "Bally Midway admitted validity and infringement of the patent," North American Philips said.

North American Philips makes consumer products, electrical and electronic parts and professional equipment. It is an affiliate of N.V. Philips of the Netherlands.

In Chicago, Glenn Seidenfeld, Jr., Bally Manufacturing's vice president and general counsel, said the company is "perplexed and astounded that Magnavox would make any such claim."

He said, "First, Bally is the sole owner in North America of Pac Man. Secondly, while Bally has an agreement with Magnavox under which it will pay royalties to Magnavox for its use, if any, of certain early video-game technology, the patented material absolutely isn't used in and is unrelated to our Pac Man unit."

Mr. Seidenfeld added that "in the four years that Bally has been producing Pac Man video arcade games, Magnavox has never even intimated any such coverage."

Manville Gets Deadline Extended to File Plan For Reorganization

By a Wall Street Journal Staff Reporter

DENVER—Manville Corp. said it was granted a 45-day extension to file a formal reorganization plan under Chapter 11 of the federal Bankruptcy Code. The previous deadline was this Friday.

A Manville spokeswoman said the company asked a U.S. bankruptcy court in New York for the extra time "to work out details of the plan." She added that there was "general agreement at the hearing (on the extension) that progress is being made." Manville filed for Chapter 11 protection in August. Under Chapter 11, a company is given court protection from creditors' lawsuits while it tries to work out a plan to repay its debts.

Manville filed for Chapter 11 in the face of thousands of suits seeking damages from the company on behalf of individuals who claim they were injured from exposure to Manville's asbestos products. The filing temporarily has halted action on the asbestos suits.

Levitz March Sales Rose

MIAMI—Levitz Furniture Corp. said its March sales rose 22% to $44.6 million from $36.5 million a year earlier.

The furniture retailer said for the first two months of its fiscal year, sales rose about 18% to $84.2 million from $71.6 million a year earlier.

Levitz operates 78 stores, compared with 76 stores a year ago.

ATTACHMENT A

Magnavox sues Bally over Pac-Man royalties

By Maurice Possley

Magnavox Co. filed suit in U.S. District Court Tuesday, charging that the makers of the popular Pac-Man video game owes millions of dollars in unpaid royalties.

The suit was filed against Bally Midway Manufacturing Co., makers of Pac-Man and other video games made in commercial coin-operated and home versions.

David Maher, one of the attorneys who filed the lawsuit, said the amount of money involved is not clear, but "anyway you slice it, there are indications of millions of dollars."

In a statement, Bally Manufacturing Co., parent of the Bally Midway unit, said the company was "perplexed and astounded that Magnavox would make" such a claim.

"Bally is the sole owner in North America of Pac-Man," Bally continued. "While Bally has an agreement with Magnavox under which it will pay royalties to Magnavox for the use of certain early video game technology, that technology is not used in our Pac-Man unit."

The legal dispute originated seven years ago when the two companies agreed to settle a lawsuit involving a Magnavox patent on circuitry used in video games. Magnavox had sued Bally, charging the company had infringed on a Magnavox patent.

Bally settled the suit by signing a sublicensing agreement on May 1, 1976, calling for payment of royalties on both coin-operated and home video games.

Under the portion of the agreement dealing with the coin-operated games, which was attached to the lawsuit, Bally agreed to pay 4 percent of the net selling price of the first 20,000 games sold and 3 percent thereafter. However, the royalty was limited to $25 per game on all but baseball and other games with a paddle, according to the agreement.

The suit, assigned to U.S. District Judge Prentice H. Marshall, asks that Pac-Man be declared as being covered by the agreement and for an accounting of revenues.

CERTIFICATE OF SERVICE

I, Christine A. Harper, hereby state that I caused a copy of the foregoing Notice of Filing, Defendant's RESPONSE TO MOTION TO DISQUALIFY REUBEN & PROCTOR, Certificate of Service and Minute Order, to all persons whose name appear on the attached Service List.

Christine A. Harper

Subscribed and Sworn
before me this 7th
day of June, 1983

Cynthia M. Ugdah
Notary Public